

SENATE BILL 3731

By Herron

AN ACT to amend Tennessee Code Annotated, Title 4;
Title 28; Title 29; Title 47; Title 63 and Title 68,
relative to medical records.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 63-2-101(b)(2), is amended by deleting the language "divulged." and by substituting instead the language "divulged or posted in any electronic format readily accessible on the internet."

SECTION 2. Tennessee Code Annotated, Title 63, Chapter 2, Part 1, is amended by adding the following language as new, appropriately designated sections:

63-2-103. In addition to any other remedies available at law, a patient whose medical information or records has been used or disclosed in violation of § 63-2-101(b)(2) and who has sustained economic loss or personal injury therefrom may recover in a civil action:

- (1) Compensatory damages;
- (2) Punitive damages;
- (3) Attorneys' fees; and
- (4) Other related costs of litigation.

63-2-104. In addition to being an invasion of the patient's right to privacy, any violation of § 63-2-101(b)(2) that results in economic loss or personal injury to a patient is a Class A misdemeanor, punishable by fine only.

63-2-105.

(a) In addition to any other remedy available at law, the department of health may assess civil penalties against any licensed health care professional who violates § 63-2-101(b)(2) after conducting an administrative hearing in

compliance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(b) Any licensed health care professional, who knowingly and willfully obtains, discloses, or uses medical information or records in violation of § 63-2-101(b)(2) shall be liable:

(1) On a first violation, for a civil penalty not to exceed two thousand five hundred dollars (\$2,500) per violation;

(2) On a second violation, for a civil penalty not to exceed ten thousand dollars (\$10,000) per violation; and

(3) On a third or subsequent violation, for a civil penalty not to exceed twenty-five thousand dollars (\$25,000) per violation.

(c) Any licensed health care professional, who knowingly and willfully obtains, discloses, or uses medical information or records in violation of § 63-2-101(b)(2) for financial gain shall be subject to disgorgement of any proceeds or other consideration obtained as a result of the violation and liable:

(1) On a first violation, for a civil penalty not to exceed five thousand dollars (\$5,000) per violation;

(2) On a second violation, for a civil penalty not to exceed twenty-five thousand dollars (\$25,000) per violation; and

(3) On a third or subsequent violation for a civil penalty not to exceed fifty thousand dollars (\$50,000) per violation.

(d) The department shall not assess civil penalties under both subsection (b) and (c) for the same violation.

(e) In assessing the amount of a civil penalty pursuant to subsection (b) or (c), the department of health shall consider any one (1) or more of the following:

(1) Whether the health care professional made a reasonable, good faith attempt to comply with § 63-2-101(b)(2);

- (2) The nature and seriousness of the misconduct;
- (3) The harm to the patient;
- (4) The number of violations;
- (5) The persistence of the misconduct;
- (6) The length of time over which the misconduct occurred;
- (7) The willfulness of the health care professional's misconduct;

and

- (8) The health care professional's assets, liabilities, and net worth.

63-2-106.

(a) No provider of health care, health care service plan, or contractor may require a patient, as a condition of receiving health care services, to sign an authorization, release, consent, or waiver that would permit the disclosure of medical information or records that otherwise may not be disclosed under § 63-2-101(b)(2) or any other provision of law.

(b) Any waiver by a patient of § 63-2-101(b)(2) shall be deemed contrary to public policy and shall be unenforceable.

SECTION 3. Tennessee Code Annotated, Title 68, Chapter 11, Part 3, is amended by adding the following language as a new, appropriately designated section:

68-11-313.

(a) In addition to any other remedies available at law, a patient whose medical information or records has been used or disclosed in violation of this part and who has sustained economic loss or personal injury therefrom may recover in a civil action:

- (1) Compensatory damages;
- (2) Punitive damages;

(3) Attorneys' fees; and

(4) Other related costs of litigation.

(b) In addition to being an invasion of the patient's right to privacy, any violation of this part that results in economic loss or personal injury to a patient is a Class A misdemeanor, punishable by fine only.

(c) In addition to any other remedy available at law, the department of health may assess civil penalties against any facility licensed under § 68-11-202 after conducting an administrative hearing in compliance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(d) Any facility licensed under § 68-11-202, that knowingly and willfully obtains, discloses, or uses medical information or records in violation of this part shall be liable:

(1) On a first violation, for a civil penalty not to exceed two thousand five hundred dollars (\$2,500) per violation;

(2) On a second violation, for a civil penalty not to exceed ten thousand dollars (\$10,000) per violation; and

(3) On a third or subsequent violation, for a civil penalty not to exceed twenty-five thousand dollars (\$25,000) per violation.

(e) Any facility licensed under § 68-11-202, that knowingly and willfully obtains, discloses, or uses medical information or records in violation of this part for financial gain shall be subject to disgorgement of any proceeds or other consideration obtained as a result of the violation and liable:

(1) On a first violation, for a civil penalty not to exceed five thousand dollars (\$5,000) per violation;

(2) On a second violation, for a civil penalty not to exceed twenty-five thousand dollars (\$25,000) per violation; and

(3) On a third or subsequent violation for a civil penalty not to exceed fifty thousand dollars (\$50,000) per violation.

(f) The department shall not assess civil penalties under both subsection (d) and (e) for the same violation.

(g) In assessing the amount of a civil penalty pursuant to subsection (d) or (e), the department of health shall consider any one (1) or more of the following:

(1) Whether the facility made a reasonable, good faith attempt to comply with this part;

(2) The nature and seriousness of the misconduct;

(3) The harm to the patient;

(4) The number of violations;

(5) The persistence of the misconduct;

(6) The length of time over which the misconduct occurred;

(7) The willfulness of the facility's misconduct; and

(8) The facility's assets, liabilities, and net worth.

(h) No facility licensed under § 68-11-202 may require a patient, as a condition of receiving health care services, to sign an authorization, release, consent, or waiver that would permit the disclosure of medical information or records that otherwise may not be disclosed under this part or any other provision of law.

(i) Any waiver by a patient in violation of subsection (h) shall be deemed contrary to public policy and shall be unenforceable.

SECTION 4. The commissioner of health is authorized to promulgate rules and regulations to effectuate the purposes of this act. All such rules and regulations shall be promulgated in accordance with Tennessee Code Annotated, Title 4, Chapter 5.

SECTION 5. For purposes of promulgating rules and regulations, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect July 1, 2012, the public welfare requiring it.